

REMARKS

By this Amendment, claims 1, 33, 37, 40, 44, and 55 are amended, leaving claims 2-18, 20-32, 34-36, 38, 39, 41-43, 45-54, and 56 unchanged. Claim 19 was canceled in an earlier Amendment.

Claim Objections

Claims 33 and 40 stand objected to for informalities identified by the Examiner relating to recitation of the phrase “front shelf” rather than the phrase “first shelf.” Claim 33 has been amended to address this concern; however, Applicants are unable to locate this same informality in claim 40. Of their own accord, Applicants have instead amended line 7 of claim 40 to recite “the support post” rather than merely “the post.” Applicants respectfully request withdrawal of the objections to claims 33 and 40.

35 U.S.C. § 112 Rejections

Claims 1-8, 37 and 44 stand rejected under 35 U.S.C. § 112, second paragraph. Regarding claim 1, the Examiner asserts that it is unclear whether the second shelf is being claimed and cites a lack of clarity regarding how two shelves could hang at the same elevation. Claim 1 has been amended to positively recite the second shelf as being “releasably attachable” with at least one of the first and second support posts. By way of example only, two shelves could hang at the same elevation by being positioned substantially side-by-side or by facing in opposite directions. Examples of how this configuration can be achieved in the claimed structure are provided, among other places, at page 13 line 11 through page 14 line 22 of Applicants’ Specification.

Regarding claims 37 and 44, the Examiner asserts that the language of those claims directly contradicts the language of their respective independent claims. Claims 37 and 44 have been amended to recite that the shelves are “releasable from and re-attachable to the location of the plurality of fastening locations on the first side of the support post to extend rearwardly from the support post,” rather than that the shelves “extend[] rearwardly from the support post.”

Applicants respectfully submit that the amendments to claims 1, 37, and 44 overcome the rejection under 35 U.S.C. § 112, second paragraph, and therefore request withdrawal of the rejection.

35 U.S.C. § 102 Rejections

Claim 18 stands rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,267,064 issued to Ostertag et al. ("Ostertag").

Claim 18 calls for:

A post for supporting cantilevered shelves in a shelving assembly having a front and a rear, the post comprising:
a periphery having
a front surface substantially facing the front of the shelving assembly;
a rear surface opposite the front surface;
a first side adjacent to the front surface; and
a second side adjacent the front surface and opposite the first side;
a plurality of connectors extending laterally and away from at least one of the first side and the second side of the post, at least a portion of each connector located exterior to the post and adapted for connection to at least two cantilevered shelves at a common elevation wherein the plurality of connectors are a plurality of pins welded to the at least one of the first side and the second side of the post and to which connectors on the cantilevered shelf engage.

Ostertag does not teach, describe or suggest connectors located exterior to a post having a front surface, a rear surface, and first and second sides, and adapted for connection to at least two cantilevered shelves at a common elevation. The Examiner refers to the uprights 31 of Ostertag as the claimed posts, and cites col. 7, lines 26-28 of Ostertag as teaching the concept of nuts permanently welded to the posts. It is unclear whether the disclosure of Ostertag actually teaches nuts welded to the uprights 31. The paragraph containing the text cited by the Examiner is directed to the design of the cantilever brackets 35 and how they are coupled to the beams 33, 33'. In fact, the cantilever brackets 35 are not coupled to the uprights 31 at all, as clearly shown in Figs. 2, 3, 4, 10, 11, 14, 16 and 17. It therefore appears as though the mention of the upright 31 at col. 7 lines 28 of Ostertag is a mistake.

Assuming, *arguendo*, that the beams 33' to which the nuts are actually welded were construed as the claimed posts, Ostertag would still fail to teach or describe the invention of claim 18. The beams 33', being C-channel sections, do not include a periphery having a front surface, a rear surface opposite the front surface, a first side adjacent to the front surface, and a

second side adjacent the front surface and opposite the first side, and do not have nuts welded to at least one of the first side and the second side of the post.

Even if Ostertag did teach welding nuts to the *uprights* 31, that structure would also not teach or suggest the invention of claim 18. Specifically, each unnumbered nut of Fig. 7 only supports one beam 33'. As such, the nuts are not "adapted for connection to at least two cantilevered shelves at a common elevation" as claimed in claim 18.

Furthermore, Ostertag does not teach, describe, or suggest *pins* welded to the at least one of the first side and the second side of the post and to which connectors on the cantilevered shelf engage. Without belaboring the point, a nut is not a pin. This distinction is affirmatively established in Applicants specification at, among other places, paragraph 0054. Paragraph 0054 describes a number of ways by which the brackets 80 may be coupled to the upright members 32, including "by one or more bolts, screws, or other fasteners," which quite clearly would include nuts such as those taught by Ostertag. However, claim 18 was previously amended to specifically recite that the connectors are "pins welded to ... the post" and that the pins are engaged by "connectors on the cantilevered shelf." (See Response and Amendment dated November 26, 2006) (emphasis added). This construction is also discussed in paragraph 0054, which explains that the brackets 80 include hooks 100 and openings 104 that receive and hold portions of the pins 44. In contrast, assuming again that the beams 33' of Ostertag correspond to the claimed posts, the only "connectors" that are "on" the beams 33' are the attachment gussets 71, which do not engage the nuts at all. Rather, bolts extend through the attachment gussets 71, through the upright 31, and are threaded into the nuts.

Accordingly, and for other reasons not discussed herein, Ostertag fails to teach, describe, or suggest the post for supporting cantilevered shelves of claim 18. Applicants therefore respectfully request withdrawal of the 35 U.S.C. §102(b) rejection of claim 18.

Claims 40-43, 45, 47, and 48 also stand rejected under 35 U.S.C. §102(b) as being anticipated by Ostertag. Claim 40 is hereby amended and calls for:

A modular shelving system, comprising:
a support post having a front, a rear, and opposing first and second sides;
a plurality of fastening locations on the first and second sides of the support post;

a first shelf extending to a first exterior location on the first side of the support post and releasably attached to the support post solely at a rear end of the first shelf at the first exterior location, the first shelf cantilevered from the support post and extending forwardly from the support post; and

a second shelf extending to a second exterior location on the second side of the support post and releasably attached to the support post at the second exterior location, the second shelf cantilevered from the support post solely at a rear end of the second shelf and extending rearwardly from the support post. (Amendment marks not shown).

Among other things, Ostertag does not teach, describe, or suggest a first, forwardly extending shelf releasably attached to a support post at a first exterior location on a first side of the support post, and a second, rearwardly extending shelf releasably attached to the support post at a second exterior location on the second side of the support post. Rather, Ostertag teaches a pair of shelf supports 83, one of which supports forwardly extending shelves and one of which supports rearwardly shelves. The shelf supports 83 each include attachment bracing 89, and the attachment bracing 89 of each shelf support 83 is coupled to a common sidewall 45 of the upright 31. (See Ostertag Figs. 6a, 9a, 9b, col. 6 lines 24-33). This is the exact opposite of the subject matter recited in claim 40, in which the first shelf is attached to a first side of the support post and the second shelf is attached to the second side of the support post.

Accordingly, and for other reasons not discussed herein, Ostertag fails to teach, describe, or suggest the subject matter of claim 40. Applicants therefore respectfully request withdrawal of the 35 U.S.C. §102(b) rejections of claim 40.

Claims 41-43, 45, and 48 are each ultimately dependent upon claim 40 and are therefore allowable based upon claim 40 and upon other features and elements claimed in claims 41-43, 45, and 48 but not discussed herein. Applicants therefore respectfully request withdrawal of the 35 U.S.C. §102(b) rejections of claims 41-43, 45, and 48.

Claim 55 stands rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,730,108 issued to Stroh. Claim 55 is hereby amended, and calls for:

A method for supporting a cantilevered shelf, the method comprising:
providing a first post and second post each having a front, a rear, sides,
and a width measured in a lateral direction across the front of the first and second
posts, the first post laterally spaced from the second post,
selecting a height of a shelf upon the first and second posts;

- connecting a first portion of the shelf with an exterior surface on at least one of the sides of the first post;
- connecting a second portion of the shelf with an exterior surface on at least one of the sides of the second post;
- cantilevering the shelf from the first and second posts in one of a forward and rearward direction with respect to the first and second posts;
- abutting the shelf against less than the width of the first post at at least one of the front and the rear of the first post; and
- abutting the shelf against less than the width of the second post at at least one of the front and the rear of the second post.

(Amendment marks not shown).

In contrast, Stroh does not teach, describe, or suggest the claimed subject matter. For example, Stroh teaches brackets 30a, 30b having lugs 51, 52, 53 at their inner ends. Each lug is inserted through one of the vertically spaced openings 25 that are defined in the *front wall* 23 of each upright post 12a, 12b. Engagement of the lugs and the inner ends of the brackets 30a, 30b with the front wall 23 of the uprights supports the brackets 30a, 30b which in turn support the shelves 31. Among other things, Stroh does not teach, describe or suggest connecting a first portion of the shelf with an exterior surface on at least one of the sides of the first post, and abutting the shelf against less than the width of the first post at at least one of the front and rear of the first post.

Accordingly, and for other reasons not discussed herein, Stroh fails to teach, describe, or suggest the method for supporting a cantilevered shelf of claim 55. Applicants therefore respectfully request withdrawal of the 35 U.S.C. §102(b) rejection of claim 55.

35 U.S.C. § 103 Rejections

Claims 1-3, 5, 6, 9-17, 22-36, 38, and 39 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,695,163 issued to Tayar in view of U.S. Patent No. 5,655,740 issued to Lazarus. Claim 1 is hereby amended, and calls for:

- A modular shelving system, comprising:
 - first and second support posts laterally spaced from one another;
 - the first support post having a first plurality of connectors extending laterally and away from an exterior of the first support post;
 - the second support post having a second plurality of connectors extending laterally and away from an exterior of the second support post;
 - a first shelf releasably attached at an elevation to at least one of the first plurality of connectors at a location exterior to the first support post and at least one of the second plurality of connectors at a location exterior to the second

support post such that the first shelf is cantilevered from the first and second support posts at only one end of the first shelf, the first shelf adjustable to different heights along the first and second support posts by releasable attachment to different connectors of the first and second plurality of connectors at respective locations exterior to the first and second support posts, the first shelf comprising:

a first side bracket;

a second side bracket; and

at least one cross member extending between the first side bracket and the second side bracket; and

a second shelf releasably attachable at the elevation of the first shelf with at least one of the first and second support posts, wherein the second shelf is cantilevered from the at least one of the first and second support posts at only one end of the second shelf.

(Amendment marks not shown)

Neither Tayar nor Lazarus teach, describe, or suggest the claimed invention. Tayar, the primary reference relied upon by the Examiner, teaches a wall mounted track 12 that supports a bracket 14. The track 12 includes a plurality of vertically spaced through holes 40a, 40b, 40c, and the bracket 14 includes hook shaped protrusions 42a, 42b, each having aligned openings 44a, 44b. The openings 44a, 44b are aligned with one of the through holes 40a, 40b, 40c to set the vertical height of the shelf and a single locking pin 46 is inserted through the openings 44a, 44b and the selected through hole to vertically lock the bracket 14 along the track 12. The pin can be removed with "finger force." (Tayar, col. 3, lines 27-47).

In contrast, among other things claim 1 recites a first and a second *plurality* of connectors that extend laterally and away from the exteriors of the respective first and second support posts. Tayar does not teach a plurality of connectors that extend laterally and away from the track 12 but rather teaches a single pin 46 that is inserted into the holes 40a, 40b, 40c. Furthermore, claim 1 recites that the first shelf is adjustable to different heights by releasable attachment to *different* connectors of the first and second plurality of connectors. Tayar does not teach adjusting the shelf by attaching it to different connectors, but rather teaches manually removing the pin, sliding the shelf 14 vertically along the track, and inserting the pin 46 into a different one of the holes 40a, 40b, 40c.

The Examiner has not addressed these deficiencies of Tayar and has therefore failed to establish a *prima facie* case of obviousness with respect to claim 1. Applicants note that although Lazarus does disclose multiple connectors 35, 51 (Figs. 5A, 5B, 5C), the only reason multiple connectors are necessary is because Lazarus does not provide cantilevered shelving.

Like Tayar, adjusting the height of the shelf hangers 16 of Lazarus does not involve attaching the shelf hangers 16 to different connectors, but instead requires re-positioning the same connectors 35, 50 into different openings.

Accordingly, and for other reasons not discussed herein, neither Tayar nor Lazarus, taken alone or in combination, teach, describe, or suggest the modular shelving system of claim 1. Applicants therefore respectfully request withdrawal of the 35 U.S.C. §103(a) rejection of claim 1.

Claims 2-3, 5, and 6 are each ultimately dependent upon claim 1 and are therefore allowable based upon claim 1 and upon other features and elements claimed in claims 2-3, 5, and 6 but not discussed herein. Applicants therefore respectfully request withdrawal of the 35 U.S.C. §103(a) rejections of claims 2-3, 5, and 6.

Claim 9 calls for:

A method of mounting cantilevered shelves to a support post having a front surface oriented to face a front of a shelving assembly, a rear surface oriented to face a rear of the shelving assembly, and a side surface oriented laterally to face a side of the shelving assembly, the method comprising:

- selecting a desired height of a first shelf with respect to the support post, the support post having a plurality of connectors at different heights along the support post, each of the plurality of connectors extending laterally and away from the support post;

- selecting a connector from the plurality of connectors;

- positioning a part of the first shelf at a location adjacent an exterior surface of the support post, the location having an elevation;

- attaching the first shelf to the connector at the location solely at a rear end of the cantilevered shelf;

- supporting the first shelf solely at the rear end of the shelf and upon the support post at least partially via the connector, such that the first shelf is cantilevered from the first and second support posts at only the rear end of the first shelf; and

- attaching a second shelf to the support post at the elevation, wherein the second shelf is cantilevered from the support post at only one end of the second shelf.

Among other things, the combination of Tayar and Lazarus does not teach or suggest selecting a connector from the plurality of connectors, where the plurality of connectors are at different heights along the support post and extend laterally and away from the support post. Both Tayar and Lazarus require selecting *an aperture* in a track 12 (Tayar) or upright 50

(Lazarus) and then inserting a locking pin 46 (Tayar) or connector 35, 51 (Lazarus) into the aperture. Because the track 12 of Tayar and the upright 50 of Lazarus are not provided with "a plurality of connectors at different heights along the support post, each of the plurality of connectors extending laterally and away from the support post," it is impossible to select a connector from the plurality of connectors while mounting shelves to either the track 12 or upright 50 of Tayar or Lazarus. Reference is also made to the above discussion of the rejection of claim 1 relating to the absence of a "plurality" of connectors in both Tayar and Lazarus.

Accordingly, and for other reasons not discussed herein, neither Tayar nor Lazarus, taken alone or in combination, teach, describe, or suggest the subject matter of claim 9. Applicants therefore respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claim 9.

Claims 10-17 are each ultimately dependent upon claim 9 and are therefore allowable based upon claim 9 and upon other features and elements claimed in claims 10-17 but not discussed herein. Applicants therefore respectfully request withdrawal of the 35 U.S.C. § 103(a) rejections of claims 10-17.

Claim 22 calls for:

A method for supporting cantilevered shelves, the method comprising:

- providing first and second support posts laterally spaced from one another, each of the first and second support posts having a front, a rear, and opposing sides, wherein the first support post has a plurality of first connectors extending substantially laterally and away from the first support post and located at a first plurality of heights on the first support post, and wherein the second support post has a plurality of second connectors extending substantially laterally and away from the second support post and located at a second plurality of heights on the second support post;

- selecting a height for a first shelf by selecting at least one connector from the plurality of first connectors extending laterally and away from the first support post and at least one connector from the plurality of second connectors extending laterally and away from the second support post;

- positioning third and fourth connectors on the first shelf at respective locations exterior to the first and second support posts, the respective locations having an elevation;

- releasably attaching the third and fourth connectors on the first shelf to the first and second connectors selected on the first and second support posts at the locations; and

- supporting the first shelf from the first and second support posts solely at a rear end of the shelf, such that the first shelf is cantilevered from the first and second support posts at only the rear end of the first shelf;

wherein one of the plurality of first connectors extending laterally and away from the first support post is positioned for releasable attachment to a second shelf at the elevation.

Among other things, the combination of Tayar and Lazarus does not teach or suggest "selecting a height for a first shelf by selecting ... at least one connector from the plurality of second connectors extending laterally and away from the second support post." Selecting a height for the shelves of both Tayar and Lazarus requires selecting *an aperture* in a track 12 (Tayar) or upright 50 (Lazarus) and then inserting a locking pin 46 (Tayar) or connector 35, 51 (Lazarus) into the aperture. Because the track 12 of Tayar and the upright 50 of Lazarus are not provided with "a plurality of first [and second] connectors extending laterally and away" from the track 12 or upright 50, it is impossible to select a height for a first shelf by selecting at least one connector from the plurality of first connectors and at least one connector from the plurality of second connectors. Reference is also made to the above discussion of the rejection of claim 1 relating to the absence of a "plurality" of connectors in both Tayar and Lazarus.

Accordingly, and for other reasons not discussed herein, neither Tayar nor Lazarus, taken alone or in combination, teach, describe, or suggest the subject matter of claim 22. Applicants therefore respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claim 22.

Claims 23-32 are each ultimately dependent upon claim 22 and are therefore allowable based upon claim 22 and upon other features and elements claimed in claims 23-32 but not discussed herein. Applicants therefore respectfully request withdrawal of the 35 U.S.C. §103(a) rejections of claims 23-32.

Claim 33 calls for:

A modular shelving system, comprising:

- a support post having a front, a rear, and opposing first and second sides;
- a plurality of fastening locations on the first and second sides of the support post, the plurality of fastening locations being exterior to the support post;
- a first shelf releasably attached to a location of the plurality of fastening locations on the first side of the support post, the first shelf cantilevered from the support post solely at a rear end of the first shelf and extending forwardly from the support post; and
- a second shelf releasably attached to a location of the plurality of fastening locations on the second side of the support post, the second shelf cantilevered from the support post solely at a rear end of the second shelf and extending forwardly from the support post.

The Examiner has not articulated the basis for the rejection of claim 33 in the Office Action. The explanation of the rejection provided on pages 5-6 is directed to claims 1-3, 5, and 6. On page 6, the Examiner includes a paragraph directed to "the method claims," which presumably include claims 9-17 and 22-32. Claim 33, and its dependent claims are not method claims and include limitations not found in claims 1-3, 5, and 6. Accordingly, the Examiner has not established a *prima facie* case of obviousness with respect to claim 33. Applicants respectfully submit that claim 33 is allowable over the prior art of record, and therefore request withdrawal of the 35 U.S.C. § 103(a) rejection of claim 33.

Claims 34-36, 38, and 39 are each ultimately dependent upon claim 33 and are therefore allowable based upon claim 33 and upon other features and elements claimed in claims 34-36, 38, and 39 but not discussed herein. Applicants therefore respectfully request withdrawal of the 35 U.S.C. § 103 (a) rejection of claims 34-36, 38, and 39.

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Tayar in view of Lazarus and further in view of Towfigh (U.S. Patent No. 5,531,168). Claim 4 is ultimately dependent upon claim 1, which is allowable for at least the reasons discussed above. Claim 4 is therefore allowable based upon claim 1 and upon other features and elements claimed in claim 4 but not discussed herein. Applicants therefore respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claim 4.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Tayar in view of Lazarus and further in view of Ostertag. Claim 7 is ultimately dependent upon claim 1, which is allowable for at least the reasons discussed above. Claim 7 is therefore allowable based upon claim 1 and upon other features and elements claimed in claim 4 but not discussed herein. Applicants therefore respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claim 7.

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Tayar in view of Lazarus and further in view of Wood (U.S. Patent No. 5,921,190). Claim 8 is ultimately dependent upon claim 1, which is allowable for at least the reasons discussed above. Claim 8 is therefore allowable based upon claim 1 and upon other features and elements claimed in claim 8

but not discussed herein. Applicants therefore respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claim 8.

Claims 20 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ostertag as applied to claim 18 and further in view of Lazarus. Claims 20 and 21 are each ultimately dependent upon claim 18, which is allowable for at least the reasons discussed above. Claims 20 and 21 are therefore allowable based upon claim 18 and upon other features and elements claimed in claims 20 and 21 but not discussed herein. Applicants therefore respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claims 20 and 21.

Claim 46 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ostertag as applied to claims 40-44, 45, 47, and 48, in view of Lazarus. Claim 46 is ultimately dependent upon claim 40, which is allowable for at least the reasons discussed above. Claim 46 is therefore allowable based upon claim 40 and upon other features and elements claimed in claim 46 but not discussed herein. Applicants therefore respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claim 46.

Claim 56 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Stroh as applied to claim 55 in view of Tayar. Claim 56 depends upon claim 55, which is allowable for at least the reasons discussed above. Claim 56 is therefore allowable based upon claim 55 and upon other features and elements claimed in claim 56 but not discussed herein. Applicants therefore respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claim 56.

Conclusion

In view of the foregoing, allowance of claims 1-18 and 20-56 is respectfully requested.
The undersigned is available for telephone consultation during normal business hours.

Respectfully submitted,



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